





No 4265.419









# SPEECH

HON. J. (COLLAMER) OF VERMONT,

In the United States Senate, April 24, 1862.

ON THE BILL TO CONFISCATE THE PROPERTY AND FREE THE SLAVES OF REBELS.

Mr. COLLAMER said: At this late stage of the discussion upon this subject, it can hardly be expected that very much of the attention of the Senate will be given to remarks from perhaps any quarter; but I have felt it to be my duty to undertake to address the Senate as well as the circumstances will permit. I have no desire to make a speech for the purpose of home consumption. I have prepared no rhetorical discourse. I have no figures of rhetoric set down in a note-book, and conned by rote. What I have to say is matter of business, and I shall talk right on, for I am in earnest about what I have to say, too much in earnest to undertake to find figures of rhetoric, or anything by way of embellishment or adornment.

Mr. President, our nation is in a stage and condition of its national existence where, undoubtedly, it attracts more than it ever did before the notice of the nations of the world, not merely in relation to the skill which is shown in our new projectiles or improved ordnance or invulnerable ships, or even in our battles, but the attention of the world is attracted to what is to be the result on this great occasion of this national experiment of ours. They say, "your experiment of a republican form of government succeeds well enough in time of peace, when there is no occasion to try it, when there is nothing to test it;" but they have looked forward to some time which might bring periods of trial and convulsion; and the question before the world is, is our system competent to that occasion; does it possess strength and elements of power sufficient to meet the shock of such a contingency? If it will not do that, they say, it is not what we have claimed it to be before the world—the great and successful experiment in popular government. "Now," say the world, "we shall see whether you can succeed with what appears to us a feebly formed government, in a period of trial." That we may be enabled to sustain the integrity of the nation—I mean its entirety, not its sense of justice—by the physical force of the nation, is but one step in it. That is not the point. The great question before the world to be now settled by us is, can we sustain the integrity of our Government, and perpetuate our institutions, and do it according to the limitations and provisions of the Constitution? That is what is to show that our Constitution is competent to the trial, and nothing short of that. If, when this occasion arises, we are compelled to resort to means which, in effect, are the means used by stronger Governments, our experiment is a failure. If we are constrained to call up, invoke, and put in exercise in any one department of the Government—it is immaterial in what department of the Government—more of power, more of force than the Constitution provides, or than is limited by that Constitution—the moment we do that, or are constrained from our supposed necessities to do it, we acknowledge before the world that our institutions are insufficiently founded, and that we are, after all, compelled, in the period of trial, to resort to the force which, they say, is necessary to the existence of a nation, and our experiment is a failure. We should, therefore, particularly in a period like this, carefully study and sacredly regard all the limitations and provisions of the Constitution. It is vain and idle in us to war against a part of our people because they have made war upon this Government, if we at the same time have to sap the foundations of the Government by stabbing through the vitals of the Constitution.

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possess, with discretion and moderation, to some adjustment of it. Let me not be mistaken. Two branches of duty devolve upon us. The first is, that the insurrection by force against us must be put down by force. We shall never be legislated out of war. We can no more be legislated out of a war than we can be legislated into the millennium. I do not believe that either will ever happen. There is resistance by force, and it must be met by force. No treatment can apply to it but that of phlebotomy; it has to be addressed entirely by blood-letting. It is of a kind that "cometh not forth even with prayer and fasting." That remedy alone can apply, and it must be sharp, decisive, conclusive; and no legislation can palliate that, none can relieve it. It is not any resolutions or laws or speeches or vamping within this Hall that can any way turn aside the bayonets of the enemy. But, sir, there may be measures in the other branch of duty, and that is an endeavor to restore this Government. What is implied in this Government and in its restoration? To my view the true leading features of this system of government were in a great measure fortuitous. Much credit has been given to the high discernment of those who formed this Constitution and this form of government; but to my mind, however willing I am to give credit to their discernment, after all, I cannot but perceive that in its essential, leading features it was almost entirely fortuitous or providential. The original notion was that a popular form of government could only exist in a very limited country, to a very small extent, where there was almost perfect unity of interests and purposes and views and intelligence, and mutual interchange of opinion. But we supposed that we had made a discovery in this—that, by forming a General Government in relation to our external affairs and matters of general concernment, and leaving all local legislation to local tribunals or local legislatures, the conflicting interests of the community would not come in contact; and that we might, therefore, by this system of State legislation and United States legislation, spread a system of popular government over an almost unlimited extent of country. That is the great feature. Now that feature came into our system because it so happened that the country was settled by separate and distinct colonies which were entirely independent of each other, to start with, and so came through the Revolution as States; and the whole of that form of local legislation had taken its existence before the United States Constitution was ever adopted.

Mr. President, it is quite obvious that State legislation, local legislation and government, is as essential a feature of this Government as the General Government. The system cannot exist any more without the one than the other. It is a failure utterly, unless both exist. Then, in restoring government, it implies that we must restore the State governments, put them again in operation, or we fail in our system altogether. In relation to this last branch of duty, I can conceive that there may be legislation even at this period which may possibly tend, if well administered, in some measure to secure that great end. But the first thing to be observed is, that, however legislation may take place, nothing can be practically done on that point until the insurrection as an armed insurrection is put down, suppressed, for then alone is it that your law can really operate. The plans which different gentlemen have presented all look to that. None of them in any of their essential and leading purposes can be carried into effect in any way until we possess the country. They are not means to that end—the end of suppressing the armed rebellion; they are only to take effect after the armed rebellion is suppressed, for that must be done in order to put such a law into operation; and the question is, can we legislate now wisely, discreetly, advisedly, in such manner that our law may be put in operation at that time with success to the end which I have stated? I confess for myself I have some misgivings about that. I cannot but agree with some suggestions that fell from the honorable Senator from New York [Mr. HARRIS] the other day. Events are rapidly transpir-



ing; circumstances take place in the course of a week, perhaps, which will call for new forms of legislation or supersede those we may now think pretty well advised, and I cannot but think that we are losing nothing, if we mean to act with discretion on this point, by waiting the progress of events.

Mr. President, I have already remarked that in whatever we do we must keep fairly within the limitations of the Constitution. It will not do to say that because we need to do this thing, because it is *necessary* in our judgment, we will do it for that reason. The limitations and prohibitions of power in the Constitution were put there on purpose to prevent our doing such things when we wanted to do them. They were not put in to prevent our doing things we never wanted to do. When it provided, for instance, that you should not pass any attainder bill, that you should not take away any man's property without due process of law, that no man should be punished unless it was on conviction by a jury, that no man should be twice punished for the same offence—prohibitions of this kind are prohibitions to everybody, and they were put in to prevent Congress doing such things when they wanted to do them. They were put in there on purpose to prevent us doing these things when we thought they were necessary. They were not put in to prevent our doing these things when we did not want to do them, and when they were not necessary at all in our judgment.

Now, the question is, after we shall have possessed that country by force of arms, can we do anything consistently with the provisions of the Constitution that will tend to bring back those people to their allegiance? If we can, and if we are clear that our measures will tend to produce a good effect in that way, very well; but if we cannot do it pursuant to and within the provisions of the Constitution, let us not, at this particular period of our trial, acknowledge in the face of the world that our Constitution and institutions are insufficient to sustain us.

A considerable part of the projects before the two Houses propose to confiscate people's property, real and personal, either all of the people in the South, or classes of them. How are you to do it without trying and convicting the men, as the Constitution says men shall be punished only in that way, and shall not be deprived of their property but according to due process of law? There has been a recent discovery that there is a certain term—a law phrase—which, perhaps, the people will not understand, that has a vast deal of *hocus pocus* in it, by which we can get rid of all that sort of business. What is it? It is what is called proceedings *in rem*. A man has been guilty of treason. Well, what is your Constitution? Try him on indictment, by a jury. You cannot punish him in any other way; you cannot deprive him of his property for it in any other way. "To be sure," say gentlemen, "that is a troublesome thing; but there is a certain *in rem* by which we will let the man entirely alone, but will seize hold of such property as he has got, and we will punish that by way of proceedings *in rem*; and by and by, when we catch him, we will try him and hang him, though that is another punishment, and the Constitution says we shall not punish him but once." So you have proceedings *in rem*, and then proceedings *in personam*! That is the discovery!

Now, Mr. President, what are these proceedings *in rem*, where you do not have any jury? What is the form, what is the character of them? They are trials before prize courts or admiralty courts. In what cases? It is when a thing is the instrument of wrong, so that in legal estimation it is a guilty thing. Then you may proceed with that thing. If a man is trying to smuggle goods, you know he cannot be guilty of smuggling without goods. The goods are the instrument of the wrong; and therefore there is a proceeding by which you may take and condemn the thing, for that is what *rem* means, I believe. So, too, if a pirate's vessel, with which he marauds upon the seas against the nations, is taken, it is a guilty thing, it is the instrument



of wrong, and you proceed against it. So when men pursue the slave trade with ships, they are the instruments of the wrong, and you proceed against them *in rem*. In proceedings *in rem* you do not give the thing notice, because it cannot answer; you do not give it a trial by jury, as when you proceed against the man.

But, sir, on this occasion there has been cited and used the decision of the Supreme Court in the case of the *Palmyra*, in 12 Wheaton, and it is cited for the purpose of supporting the doctrine that if a crime is committed for which the thing is liable to be forfeited, as well as the man subject to punishment, you may proceed against the thing by itself without convicting the man. That is not so; that case was not so. Let us look at the case and see what it was. What the judges talked about outside of the case is a matter of no consequence; it is extra-judicial; what the boys call "slopping over." We had a statute of 1819, which was revised and enlarged and extended in 1820, which authorized the President "to instruct the commanders of public armed vessels of the United States to seize, subdue, and send into any port of the United States, any armed vessel or boat, or any vessel or boat the crew whereof shall be armed, and which shall have attempted or committed any piratical aggression, search, restraint, depredation, or seizure, upon any vessel of the United States, or of the citizens thereof, or upon any other vessel." A vessel of that kind was seized and brought in and on trial, and one point that was made before the court was that they could not condemn that vessel by a proceeding *in rem* until the owners or crew of the vessel had been themselves tried, and remarks were made about that. Observe, there was no law to punish the men who were engaged on board the vessel; the court say that; and therefore they say it will not do to argue that we cannot condemn this vessel, she being the guilty instrument of the wrong, because the men are not tried for the crime and convicted, for there is no crime for them to be convicted of; we cannot try them; it is not provided for. Hence the thing was a guilty thing, and it was proceeded with in that way as within the class that I have already alluded to.

This proceeding *in rem* is spoken of in a manner which would be rather ludicrous if it were not so serious an affair, but it is no slight thing to say that when a man has committed a crime like that of treason, and is within the reach of your process, you may proceed to strip him of his property or do anything you can do, as you say, and then punish him afterwards. Is it a rule that you must do on such occasions whatever you have physical means to do, and therefore, if you cannot reach him in any other way, if he has gone out of the reach of process, you must take his property because you have nothing else to take? If a man is guilty of counterfeiting your Treasury notes, and you cannot catch him, if he is out of the way, why not, on the same principle, have a law to cut his wife's throat if he has no property? Sir, the whole idea in my estimation is entirely wrong, and an attempt to do that which the provision of the Constitution was intended to guard against. It nowhere says that if you cannot punish the man because he gets out of the reach of process, therefore you may disregard the provisions of the Constitution and take some other way. There is nothing of that kind in the Constitution. I take it we have all our powers from the Constitution, and that in itself inhibits to us by absolute abnegation that we shall exercise any powers but what are there granted, and all the rest were reserved from us.

Mr. President, this word "confiscate" literally means "put into the Treasury," and it can legitimately be applied only to that out of which you can get something to put into the Treasury. That is truly the meaning of the term. But, sir, when we legislate for the people of the Southern seceded States we do it because they are our people. We treat all this secession as void, and I take it, that that which is void can have no legal effect. It can have no effect to confiscate anybody's goods or annihilate the States; nor can



it have any other legal effect whatever. When we legislate for that people as our people in common with the rest of our citizens, we must allow to them all the rights and privileges, immunities and protections that the Constitution gives to citizens of the Union. I have therefore made the remarks which I have made upon this question on the basis that we cannot take courses in relation to them, by laws made by us over them as a people bound by those laws, on any other grounds than those which apply to all our people. If we make laws by our power under the Constitution we must regard the prohibitions of the Constitution, else we are lawless. And it makes very little difference to what department of the Government all this usurpation goes. If it is true that the Congress of the United States on an occasion like a war of this kind can take to itself and exercise all power, regardless of the prohibitions of the Constitution, and further, can make itself commander-in-chief of the army and conduct the particulars and details of the war in all respects, I do not know that there was any usurpation by the House of Commons in the time of Cromwell. They said they represented the people, and they took command of the generals of the army; they overrode the other departments of the Government and broke down the Government itself. Suppose we choose to take control of the army and all its command, and of its Commander-in-Chief, and direct all its details as we please, and send our committee on the conduct of the war out into the camps to inspect the proceedings of the generals and direct them in their duty, as was done under Cromwell; I do not see that it would be anything more or anything less than a usurpation and tyranny; and its being in this body, or in these two bodies constituting the Congress, does not relieve it of the difficulty in the least.

It is said, however, that we are at war, and that we have become elevated to the privileges, and are entitled to exercise the rights, of a belligerent; that this power of confiscation is a sort of war power over our own citizens that we have a right to exercise in the capacity of a belligerent. I have given what little reflection my limited powers would allow to this branch of the subject. I at first thought it was tolerably plausible, that, to some extent, such a power might be used; but the more I reflect on it, the more I perceive that the whole of that doctrine about the relative rights and privileges of belligerents to each other is utterly inapplicable to the present condition of things between us and the seceded States and their people. Undoubtedly, so far as regards the conducting of the war, it should be conducted according to the laws of nations, and, if you please, according to the usages of nations in these times of civilization; but when we come to the rights of belligerents, can we apply them? When we conquer a country with which we are at war, we own the public property there. Now, we have conquered Tennessee, if you please. Do we own the capital at Nashville to-day? Do we own any of the universities and colleges and public property of the State of Tennessee to-day? If they are treated as belligerents, then when you conquer the country, the property in the land remains in the individuals who owned it before, and the nation acquires no title to it by conquest. Here is an attempt to get possession of all that property of individuals who have been concerned in this rebellion. And how? As a belligerent. According to the laws of nations, a belligerent does not get it. I know that the Constitution provides that Congress may issue letters of marque and reprisal, and make regulations in relation to captures or seizures by sea and land. That looks to a state of war, undoubtedly. What is a seizure or capture? What is the meaning of the term? Something that you take, make prize of, carry away. Can you carry away the farms of an enemy? Are they the subject of capture? Not at all.

But, Mr. President, when, after a war with another nation, you make peace with it, all matters are ended, depending on the form of your articles of peace. It may be the *status ante bellum*, it may be *uti possidetis*, depending on the terms of your treaty; but all matters are then ended. Now, when we have



conquered these people, taken military possession of the country, can we not punish the men who have been in rebellion; can we not render it legitimate to hang them? Certainly. Could you do so with enemies with whom you have made war and peace? No; but in such cases, when peace was declared, the past would be wiped out.

Again, to treat with them and treat about them as being belligerents, is to acknowledge them, so far as this war is concerned, as a coequal power. We have complained that any foreign nation acknowledged and recognised them as in a state of belligerency. We thought it was pretty hard usage to us. I do not see it in that light exactly; but at any rate, especially after what has been said to the other nations of the world by our functionary and correspondent of the State Department, it ill becomes us to take measures founded on the ground that they are coequals and belligerents, and that we may make laws accordingly. This legislating for that people as bound by the laws that we here make, and at the same time legislating for them as enemies and belligerents, not bound by the laws we make, is to my mind utterly inconsistent, utterly irreconcilable, and I shall not, therefore, make any further remarks in relation to what might by possibility be done by us as belligerents.

Mr. President, I am fully aware that in a time of war, or in a time of rebellion as this is, it was clearly contemplated or implied in the Constitution that a pretty large amount of executive power would have to be put in exercise. I have always considered that that provision of the Constitution which declares that "the privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it," implies that, in a state of rebellion and of invasion, even that sacred writ may be suspended—would have to be suspended; and the moment it is suspended, a large latitude of executive power must necessarily be put in exercise; it was contemplated that it would be. I do not stop here now to consider whether that suspension of the *habeas corpus* should be by legislative or by executive act. All I have to say upon that is, that if we were to pass a law authorizing the Executive to suspend the *habeas corpus*, he would have to exercise precisely the power which he has exercised. When, how, for what class of cases it should be suspended, would, of course, in our statute be left to the Executive; we never could anticipate all conditions of things that might arise. The form of a statute that could have any practical effect would bring you to precisely the condition of things that now exists.

So, too, in the prosecution of the war, I am aware that when the President calls out the militia to suppress insurrection, and uses the Army according to law for that purpose, it implies force, it implies that everything shall be done which is necessary to secure the end as a military necessity; but I insist that the Executive, his generals, the military power, are the sole judges of what is military necessity. It is not possible that we can by legislation provide for the prosecution of the war in all respects, and enact the laws by which it shall in all cases be governed. War, even in its most modified form, is in a great measure the law of retaliation. You do what is necessary to meet the enemy's acts; you retaliate on him, and go sometimes to great extremity, laying waste his country, spreading over it utter desolation. It may be a military necessity to do that; but to undertake to sit here and make laws directing the Executive and the generals as to what they may, and what they may not, consider as military necessities, is utterly idle, because they are constantly changing with the changing circumstances; and, as I have before said on another occasion, when you undertake to make the laws to regulate what they may do, you necessarily imply that they must not do anything but what you have regulated. It was said by the honorable Senator from Ohio, [Mr. SHERMAN,] yesterday, that the Executive, through his officers, may take ships and burn them. Did we make any law for that? No. Do we complain of its being done wrongfully? No. It did not need any law, then, to do it. It does not



need any law to stop it. It is said that this confiscation is a military proceeding, a military necessity. If it is—I do not decide that point—we know where to go, we know who is to decide whether it is or is not; and if we do anything that takes away from the Executive and his generals the deciding upon what is military necessity, we usurp their rights, usurp their powers.

Mr. President, the legislation which is called for at the hands of legislative bodies depends in a great measure upon the exigencies of circumstances, and ought to be addressed to them, fitted to them. The old law the mischief and the remedy, lawyers well understand. We should look to what is the present law, and see what is needed, and what shape the law should take to effect the desired end. When the Executive, through its generals and its armies, shall have put down the armed rebellion—and nothing of great importance can be done here until that is effected—what is wanted, what is needed? Nothing can now be offered by the President to these people but that, if they will return to their allegiance and be obedient, they shall not be hanged. We all perfectly well know that the idea of hanging a hundred thousand men, or ten thousand men, or anything of that kind, is idle. Nobody apprehends it; nobody has any fears of it, and I trust nobody has any hopes of it. Then that will not enable the President to hold out any inducement at all, because they have no apprehensions on that subject. All rebellions that are unsuccessful, that are suppressed, among any civilized people, end in a bill of amnesty, from which some are reserved and excepted for punishment. The great body of the people are pardoned. I recollect among a civilized people of but one rebellion that was ever attempted to be treated in any other way, and that was the Monmouth rebellion, under the Duke of Monmouth, in England, in the time of James II—a very foolish rebellion, and one which was readily suppressed. King James sent Jeffreys, and he hung two hundred and odd people, including females. It was called “Jeffrey’s western campaign.” Though the people of England disliked the man for his bigotry, they disliked that rebellion; but when that experiment was tried on the British people, when it shocked the humanity of the British nation, it produced the culmination of the public disgust with that same James II, and in a short time Jeffreys died in the Tower, and his master was fleeing from the throne of England. That was an attempt to deal in another way with a rebellion.

I look to no such result in this country. I know our people are exceedingly exasperated, and I participate in that feeling myself, as an individual. But revenge, exasperation, feelings of vengeance, should not be entertained by nations, nor by bodies representing nations. Rebels must be treated with severity to extremity; a proper number of those who are needed for example, for its wholesome influence afterwards, should be brought to condign punishment; but the great mass must have an amnesty.

When we began with putting down this rebellion we had but one law which related to the subject in any way—the law of 1795—which provided that the President, in case of an insurrection, should issue his proclamation directing the insurgents to disperse by a certain day, and calling out the militia to suppress that insurrection and to enforce the laws. Probably that was as much as was needed for the Pennsylvania whisky insurrection, for which the law was made. It was not a severe affair anyway. At any rate, the law answered its purpose there. When we assembled here last summer, the President had ordered the dispersion of the rebels, but they had not dispersed. He had called out the militia, and they were here. The circumstances which had transpired required more legislation. That already provided had been so far executed; but it did not answer the purpose. We then proceeded to pass a law, which, among other things, contains a section declaring that whenever an insurrection shall exist in any State, claiming to act under the authority of the State, and those exercising authority in the State do not disclaim it and do not suppress it, in such cases the President is authorized to issue his proclamation



declaring the people of those States or parts of States which are in that condition in a state of insurrection, and that thereupon all intercourse with them shall cease, and prize be made of all who attempt intercourse to and from them. That is the law under which we have acted, and under which we are acting, and under which prizes are made. Now, it seems that does not entirely answer; it does not effect its purpose. Our armies, too, increased as they are, valiant and bold as they are, "armies with banners," splendid and brave, have not answered the purpose yet. I venture to say, though it was said before on an occasion when it was not very acceptable to our people, that if five hundred thousand men will not do, a million of men must. It must be put down, because if we fail in suppressing the armed rebellion, the Government is a failure; we cannot sustain the integrity of our nation. That being done, I say we come to treat of the subject of which we are now talking. What next? Legislation is needed. I have said that what is needed is, in the first place, some law to put into the hands of the Executive the means of offering some inducement to those people, after he shall have taken possession of their country, to come back to their allegiance, duty, and loyalty—some interest, some motive, some purpose, some mode of relieving them from some liability under which they are and which they fear, something which they believe we can put into execution. They have no belief in our putting into execution the idea of hanging two, three, or four hundred thousand of them. It must be something which they believe is practicable, capable of being executed, and from which they have apprehension. That is what is needed.

Again: the same law which provides for that, should provide a mode by which the guilty can be punished in an exemplary manner, in a way practicable of being carried into effect. That is what is needed, as well to deal with the guilty, stubborn, disobedient, incorrigible, on the one side, as to protect those who become obedient, or subservient, or submissive, on the other.

With these views, I now proceed to examine somewhat the projects before us. The bill of the honorable Senator from Illinois, [Mr. TRUMBULL,] which has been reported, I believe, by the Committee on the Judiciary, though I think he first presented it himself, substantially declares that the property, real and personal, of all people who shall be in rebellion, shall be forfeited or confiscated—I may not use the words, but that is the substance—and that forfeiture shall take effect from the time the act was committed. It says that so much property as is seized in the manner thereafter provided for, shall be taken by commissioners appointed by the President, and the way thereafter provided is, that the President may appoint officers, civil or military, to take possession of this property, sell and dispose of it, and account to the Treasury. That implies, of course, that you have got possession of the country so that it can be done. If you have possession of the country, and can do that, you can just as well have courts regularly administered, and there is no necessity for resorting to this extraordinary means. But in my view, when a thing is declared forfeited by an available law, though you direct the mode of proceeding by the President, all that he does not take it is the business of the prosecuting attorney in that State, whenever your laws are in full operation, to proceed against. He is to take measures for the confiscation of the rest. It is all forfeited, all confiscated. The proceedings to be taken with it may depend on the condition of the country. If you have military possession merely, you may take what your army can lay hold of; and when that is through with, and you have government established, you may take the rest. This then, amounts to taking possession of the whole of the property, as far as practicable, by the President, and disposing of it, selling it, and delivering possession, land and all.

The amendment presented by the honorable Senator from Ohio qualifies that in this: it says that the property of certain classes named in it shall be forfeited. The honorable Senator from Illinois has told us, and very cor-



rectly, no doubt, that the people engaged in this rebellion, in point of fact, own almost the whole of the slaves and all the other property generally. The Senator from Ohio tells us that the officers own all the property. That is probably so.

Mr. SHERMAN. My friend misunderstood what I said. I said there were probably no privates in the army of the confederate States owning slaves. I have no doubt that the great body of slaves in the southern States are owned by people who are quietly on their farms, but whose sons perhaps are engaged in the rebel army. That is probable.

Mr. COLLAMER. I am not familiar with that; but I supposed they did not let anybody stay at home on his farm, but required every one to contribute in some way to aid or assist the rebellion. They do not suffer such people to be there. There may be old men who cannot perform military duty, but they must make their contribution, they must aid and assist, give their countenance to the rebellion.

Mr. SHERMAN. The proposition offered by me does not embrace persons who simply give aid and comfort, but only officers who are actually engaged in armed rebellion.

Mr. COLLAMER. I was not aware that the amendment made that distinction. It certainly includes civil officers.

Mr. SHERMAN. Certain civil officers.

Mr. COLLAMER. And includes those who have owed allegiance to this country, and afterwards abandoned it. That proposition will include the people who own slaves mainly. I have no doubt the gentleman intended to include them. Those who own the slaves also own the land generally, and all other species of property. I look upon the practical effect of these two propositions as amounting to the same thing. Now let us look at the effect for a moment. The way to test a thing of this kind is, in some measure, to "try it on."

A short time since, Mr. Cave Johnson was at Clarksville, and he informed Commodore Foote that the rebel army had gone away from Clarksville, and he had better come there and take the town and take care of it. These people had all been engaged in the army pretty much, but Commodore Foote came and took possession. The people were in great consternation, not knowing what would happen; and he published a card informing them that if they remained in their houses and attended to their ordinary business, and behaved themselves, they should be protected. When General Buell got to Nashville, he published a proclamation to the same effect. Now, suppose you pass this bill in this shape, and another city which has been possessed by the enemy is abandoned or their soldiers are driven out of it. The people of that city have been almost entirely concerned with the rebels, and they come to our general and say, "We are satisfied that we cannot continue this rebellion any more; we are willing to submit; we want to know whether you will protect us from wrong and violence." "What do you want to be protected in?" "In our property, in our families, in our houses, our residences." "You have got no houses, you have no homes; you want to be protected in your property; you have not got any property; the whole of it was confiscated by Congress last week; and we are here to sell it, dispose of it, and put the purchasers into possession; you are all of you in that condition." "Is that all that is left to us if we become obedient to the laws?" "Yes, all except to be shot; I do not know that there is anything else; if you resist and go on, I do not know how you will come out; but if you submit to us, subject yourselves to our laws, that will be your fate; and your slaves will be set at liberty; and your six or eight millions of people unhoused have nothing, and have nothing to buy it with." [Laughter.]

Now, Mr. President, it is beyond my comprehension how the road to peace



lies in such a path. I am unable to see how peace can be attained by any means of that kind. Oh, but it is said we must have some money; our people are burdened with taxes and debts and expenses, and we must have something to repay them. I should like to ask a man who talks in that way, how much he thinks can be got out of it. What would you give for a farm down in Tennessee or Georgia, with the people swarming around you unhoused—people believing themselves to be owners, who were outlawed and deprived of their property by you? Why, sir, it would require two regiments to take care of every plantation. [Laughter.] No man would give a dollar for such a title. The idea of realizing money in that way is to me as idle as the idea of realizing peace in that way.

I come now, Mr. President, to talk more particularly in relation to another branch of this bill, which is not so obvious, perhaps. It seems to me that there is another purpose that is covered up by this pretence of forfeiture or confiscation and proceedings *in rem*, which have really nothing to do with it. When we are communing together, and talking freely, we may as well tell the truth as not. I cannot exactly recommend my example in that respect, as the old gentleman did who told his sons that honesty was the best policy, "because," says he, "I have tried it both ways." [Laughter.] Now, the truth is, that there is a large provision in this bill for the liberation of slaves, and I am strongly apprehensive that the more particular friends of this bill regard that as *the* bill. Without that, they would care nothing about it. Many of them, I have no doubt, are exactly in that condition. Are you going to have these slaves seized as prize of war? There is no provision of that kind, because you know that what you declare prize of war must be seized during the war; and if it is not, when the peace comes it escapes, and you cannot take it at all. No; this provision is made to declare all slaves free without ever taking them. There is no caption of them required. They are not declared prize of war, or required to be proceeded with as such. How is it, then? They are regarded as property. I do not mean to fall into any objectionable point on that. I do not believe in having property in man any more than anybody else; but certain it is that the master, as he is called, is acknowledged by the Constitution to have an interest in the labor and service of his slave. There is an acknowledged pecuniary interest there recognised. It is a pecuniary interest. You propose to get rid of that interest, clear it out, discharge it. Can you do that by a proceeding *in rem*? I know we made a law at the last session declaring that where slaves were made the instruments of wrong by using them for military purposes in aid of the rebellion, they should be free, and that falls within the doctrine, within the principle, I have stated. But nothing of that kind is here. It was not put here purposely, because a proceeding *in rem* implies that you have possession of the thing, and brought it into court to be adjudicated upon. It is not provided that these slaves are to be taken or brought into any court, or in any way adjudicated upon. There is not any proceeding *in rem* required upon them, nor any other proceeding. If that is not depriving a man of his interest in a slave without any conviction of himself, and without any process of law, and operating as a punishment on him, and yet leaving him to be hanged, I do not understand it. It seems to me to be all that, every particle of it.

Again, Mr. President, we have individually, and the Republican party as a party, thrown our creed and articles of political faith before the world. We have subscribed to them, most of us personally, individually at different stages, and I believe it is not necessary for me to make any personal professions about that. I am still very much inclined to abide by a plighted public faith, and by private faith too. I cannot but observe that those gentlemen who certainly have been distinguished as much or more for their activity in relation to the subject of slavery as for anything else, are committed to the creed



of the Republican party on this point. Take, for instance, the honorable Senator from Massachusetts, [Mr. SUMNER.] I will read his words. On offering a certain memorial, on the 25th of February, 1861, he said :

"I offer this memorial, sir, because I deem it my duty to offer all memorials that are respectful in form, when sent to me ; but in offering it, I take this occasion to declare, most explicitly, that I do not think that Congress has any right to interfere with slavery in a State."

I do not know that the gentleman has ever spoken in any other way.

Mr. SUMNER. Never.

Mr. COLLAMER. I have never heard him speak otherwise, and I have generally heard what he had to say. I have been glad to find that this somewhat early and uniform doctrine of our party had not become outlawed by war, and hence I was pleased to hear some Senators who sit near me, and whom I always hear with very great pleasure and respect, make use of the expressions which I am about to read. I will use their language as better expressing the idea than any language I could employ. The honorable Senator from Maine, [Mr. FESSENDEN,] in the course of the debate upon the bill for the abolition of slavery in this District, said :

"Mr. President, that the Republican party would rejoice to see slavery abolished everywhere, that they would rejoice if it no longer existed, that they feel it to be a blot upon our fair institutions, and a curse to the country, there is no doubt. I can answer for one, that has been my opinion always, and I have expressed it here and elsewhere ; but, sir, I have held, and I hold to-day, and I say to-day, what I have said in my place before, that the Congress of the United States, or the people of the United States through the Congress, under the Constitution as it exists now, have no right whatever to touch, by legislation, the institution of slavery in the States where it exists by law. I have said that, and I say it again, boldly ; for my position never has been misunderstood on this subject."

The honorable Senator from Ohio, [M. SHERMAN,] on the same occasion, said :

"We ought now to abolish slavery in this District. We have the right, and it is our duty to do it ; and if we had wasted less time in doing it, it would probably be just as well. We ought, then, religiously to adhere to the promises we made to the people of this country when Mr. Lincoln was elected President. We ought religiously to abstain from all interference with the domestic institutions of the slave or the free States. We ought to stand by the Constitution as it is, by the Union as it is. Whether rebels are in arms or not, our duty is to stand by our pledges, to stand by our manhood ; and I, for one, will do it."

If we make a law, intending it to be operative, by which we declare that the slaves of all engaged in this rebellion, or of all the officers and classes mentioned in the amendment of the Senator from Ohio, are free, and all right over them abolished, do you believe, does any man of common sense believe, that you can make the world understand that we have not interfered with slavery in the States, and not to a very limited extent either, but to about the whole extent to which it exists ? All remarks, however ingenious, and all sophistry, however plausible, which can make this look any otherwise, is but a delusion. It cannot be seen in any other light. This is not put on the ground that it is a military operation, not on the ground of proceedings *in rem*, not that it deprives a man of his property and yet leaves him to be hung, not upon any conviction, not upon any process of law whatever, except this law which we now make.

It seems to me, obtuse as I am, perhaps, in my perceptions, that that is directly interfering with this plighted faith ; and it seems to me, further, that it is in direct violation of the provisions, prohibitions, and securities which the Constitution enacts. I, for one, will not do it. I do not regard myself as needing any apology for not doing it. I do not think my people wish me to contribute to breaking any provision of the Constitution, and they know I would not do it if they did wish it ; nor do they need any apologies from me for regarding the oath I have taken.

But, sir, if we had this power, allow me to make a single remark as to the policy of it in aiding to put down the rebellion. You propose to say to the officers, "your property is confiscated," and to the soldiers, "you may proceed with impunity ; if you do not succeed you shall not be punished." Is it not saying, "now, you officers, fight on to save yourselves ; and soldiers, you may follow your officers as far as you can : for, after all, if you do not succeed, you are no going to lose anything." Really that does not seem to be very good policy. The same treatment is proposed in regard to slaves. The slaves are now in the possession and control of their masters, except so



far as our Army goes. If they try to get away, especially if they are at any considerable distance from our armies, their masters will not allow them to do it. Of course, the masters are not going to let them get away, to join us to shoot them; they will stop them; perhaps kill them in the attempt. If we knew people were going from us to join the enemy and fight us, we should not let them go. Neither do they. Now, by this bill, we say to these slaves, if they are ever to learn what we do at all—and if they do not, it can have no effect—“you need not run any risk about offending your master; perhaps your master will succeed in the rebellion; and you will suffer pretty hard if you undertake to run away and he catches you; you may remain quietly with your master, and not incur the hazard of his displeasure or punishment; but if, after all, your master does not succeed, you shall be free, whether you help us or not.” Is that good policy? That is the bill. It does not seem to me to be a very wise means to the end, if such an end is had in view, as I suppose.

I will now call the attention of the Senate to the bill which I have submitted as an amendment. It is printed, but I have made some little alterations in the copy left on the table. In the first place, in order to enable the President to have in his hands an opportunity to offer some objects and advantages and purposes to that people, I have taken this course: in the first section of my bill, I provide that the punishment for treason upon conviction may be death, or, in the discretion of the court, it may be fine and imprisonment. That fine is limited to be not less than \$10,000, and the imprisonment to be not less than five years. The maximum I have left to the discretion of the court. I intended that the fine in the power of the court to lay should be such as was adapted to the man's means, and I would put the fine large enough to strip any man who was incorrigible.

I further provide that the effect of the conviction shall be that he shall be incapable of holding any office under the Government, and that his slaves shall be free, and that this fine shall be levied and collected out of any property he possessed at the time the act was committed. I am free to acknowledge one purpose that I had in this provision. Much has been said about the subject of the forfeiture of a man's estate beyond his life. I do not choose to discuss that; I do not desire that we should be involved in it. What is forfeiture? It is the taking of some specific thing, as all the visible property a man now possesses—his farm, his horse, his ship. That is a visible, material identity that is forfeited. A fine has no such quality. A fine is but the mulcting of the respondent in a sum of money. If he pays it, well; if he does not pay it, you may levy and collect it out of his property. I have created no forfeiture by my bill. The act creates none, but it enables the courts to levy and collect the fine out of the convicted traitor's property. I involve no question as to whether you can create a forfeiture of anything beyond his life or during his life. It is no forfeiture whatever. I avoid that question altogether.

It is next provided in my bill that, in order to meet this, the President shall have power to take possession of the property of a person thus engaged, wherever situated in the United States, real and personal, to sequester it to meet this fine, to be holden until the man is tried, sooner or later.

Having done this, I propose in the next section that the President shall be authorized to issue his proclamation offering indemnity and pardon to the people, with such exceptions and upon such conditions and at such times as he shall point out. Suppose we take possession of a State, and the people remain; the President issues a proclamation to the people, saying to them, “I have appointed officers; and now if you will within sixty days, all of you, except Jefferson Davis, Robert Toombs,” or their generals—what exceptions he thinks the public safety requires should be condignly punished—“with these exceptions, if you will come in to the officers I have appointed, and take your oath



of allegiance, I give to you amnesty and pardon." He has something to offer then.

Pass such a bill, and they see by it that they are subject to be fined and stripped as well as imprisoned, and to save themselves and families from that they would do what they would not do to escape hanging, which they know will never be administered. You can hold out to them some purpose, some object, some advantage, and in my opinion the great body of the people not excepted would at once avail themselves of the offer. If you take off the pressure of their armies from them, if you relieve them of those armies that are riding over them, of the incubus that is resting down on them, and give them the opportunity of loyalty and allegiance, you will have it, I have no doubt; but I propose to have the punishment remain in force, capable of being executed on all those who are so bad as to be excepted out of the proclamation of amnesty, or so obstinate that they will not submit. The authors of this atrocious rebellion must be excepted from all amnesty and suffer death, unless they expatriate themselves and stay out of this country, and the obstinate must be imprisoned and reduced to poverty, for punishment and for wholesome example, and all the property of both, or its avails, be put into the treasury. That, it seems to me, will be the practical effect. It will have to be carried into execution after possession is had of the country, after the proper discriminations can be made, after our authorities have looked around amongst the people and seen who it is that needs to be punished, and who are those whom the safety of the public would permit to be admitted to their loyalty and allegiance. You cannot make that distinction by classes now and here before the thing happens, as is attempted to be done by the honorable Senator from Ohio. He says by his amendment that the President may extend an amnesty, if he pleases, to any of the classes named. Why, sir, that is not what is wanted. You cannot make the discrimination now. There may be men as good as Matthew Hale who have actually taken and hold offices under that *de facto* Government, and who the gentleman from Ohio would have no more desire to hang or to strip than Charles II had to hang Chief Justice Hale. These discriminations can only be made when the means and opportunity for information exist.

I can conceive that there may be found some parts of the United States, some sections perhaps in South Carolina, where the people would never submit. I have no idea that any very great success, in the way of submission and restoration of the Government, will take place successfully in Tennessee, so long as there is a rebel army down there in the neighborhood to which the people look either with hope or apprehension. If there is an army of rebels in the vicinity, which part of them believe is to come back to relieve them, or part of them believe will get back to punish them, you can easily see what will be the result. The armed rebellion must be suppressed utterly, and then means like these may be operative. But, sir, suppose you come to a people that will not submit. That may happen, and hence, to recognise the existence of such an executive or military power in such a necessity, and in order to limit and direct its exercise, I have inserted a section looking to such an extremity, authorizing the President, if he finds it necessary in order to bring the war to a close—that is, if it becomes a military necessity—to issue a proclamation to the people, fixing a day, and saying to them, "If any of you are engaged in this rebellion after that day, your slaves shall all be free." That is to give fair notice, and that may produce an effect. You have it in your hands as the means of reconciliation.

I cannot but further remark, Mr. President, that in all these bills declaring all the slaves of these people free, no pardon or amnesty that the Executive would have power to render could ever restore them to bondage. If the law, as it declares, makes them free when the owners are guilty of being in arms against us, they are free *ipso facto*, and they are free from that moment.



The pardon or amnesty to those people mentioned in the amendment of the Senator from Ohio could not restore their slaves to bondage. That part of that bill is framed with a view to the freedom of the slaves absolutely, without process, without law, without proceedings *in personam* or *in rem*, and without the possibility of re-enslavement; and yet we are told this is not interfering with slavery.

I have but one other section in my bill which I have copied from others, and that is one which I regard as nothing but an addition to the fugitive slave law. It provides that when men undertake to pursue their slaves, they shall, in order to give them *status* in court, show that they have been loyal in this rebellion. I have no objection to that as a part, an addition, an amendment, of the fugitive slave law. That ends my bill, sir, and I have no more to say.

*Amendment proposed by Mr. Collamer to the bill (S: 151) "to confiscate the property and free the slaves of rebels."*

Amend the title to read as follows: "A Bill relating to treason and rebellion." Strike out all after the enacting clause and insert the following:

That if any person or persons owing allegiance to the United States shall, after the passage of this act, levy war against them, or shall adhere to their enemies, giving them aid and comfort, and shall thereof be convicted, on confession in open court, or on the testimony of two witnesses, to the same overt act of treason, whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death, or imprisonment not less than five years, and be fined not less than ten thousand dollars; which fine shall be levied and collected on any or all of the property, real and personal, of which the said person or persons so convicted was owner at the time of the committing of the said act, any sale or conveyance to the contrary notwithstanding; and every person so convicted shall be forever incapable and disqualified from holding any office under the United States; but the President may pardon or remit the whole or any part of said punishment.

Sec. 2. *And be it further enacted*, That the persons to whose labor or service any person convicted under this act has claim by the laws of any State, shall be thereafter forever free and discharged therefrom.

Sec. 3. *And be it further enacted*, That this act shall not be construed in any way to affect or alter the prosecution, conviction, or punishment of any person or persons guilty of treason against the United States before the passage of this act, unless such person is convicted under this act.

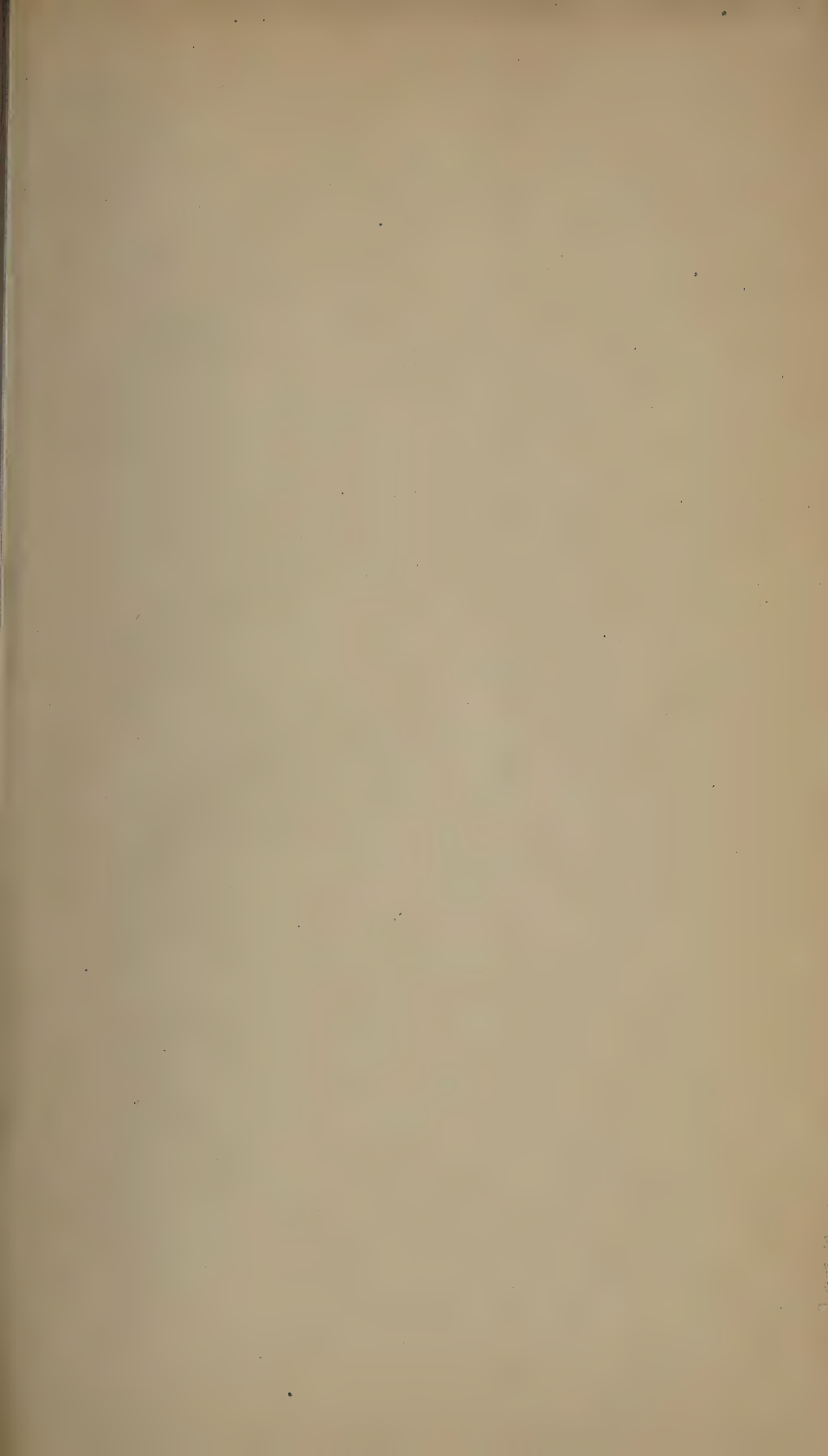
Sec. 4. *And be it further enacted*, That whenever it shall be deemed necessary to the speedy and successful termination of a rebellion by the President, he is hereby authorized, by such commissioners as he shall appoint, to sequester and seize the property, real and personal, of such persons as shall bear arms against the United States, or give aid and comfort to such persons wherever situated; and if within any part of the United States the inhabitants whereof have been proclaimed to be in a state of insurrection, to hold, occupy, rent, and control for the United States until the ordinary course of judicial proceeding shall be restored in the State or district where the same is situated, and in all cases until the owners of said property can be proceeded against by legal prosecution; but no persons holden to service, commonly called slaves, shall be taken under this section. And all such personal property as shall be so taken which is perishable, or expensive in keeping, may be sold by said commissioners, who shall keep and render full accounts of all the avails and receipts from said property so sold, let, or occupied, and pay over the avails to the treasury of the United States.

Sec. 5. *And be it further enacted*, That whenever the President, in pursuance of existing laws, shall, by proclamation, have declared the inhabitants of any State or section, or part thereof, in a state of insurrection against the United States, he is hereby authorized, at any time thereafter, by proclamation, to extend to any such persons who may have participated therein, and in any such State or part thereof as he shall judge proper, pardon and amnesty, with such exceptions and at such time and on such conditions as he shall declare and proclaim.

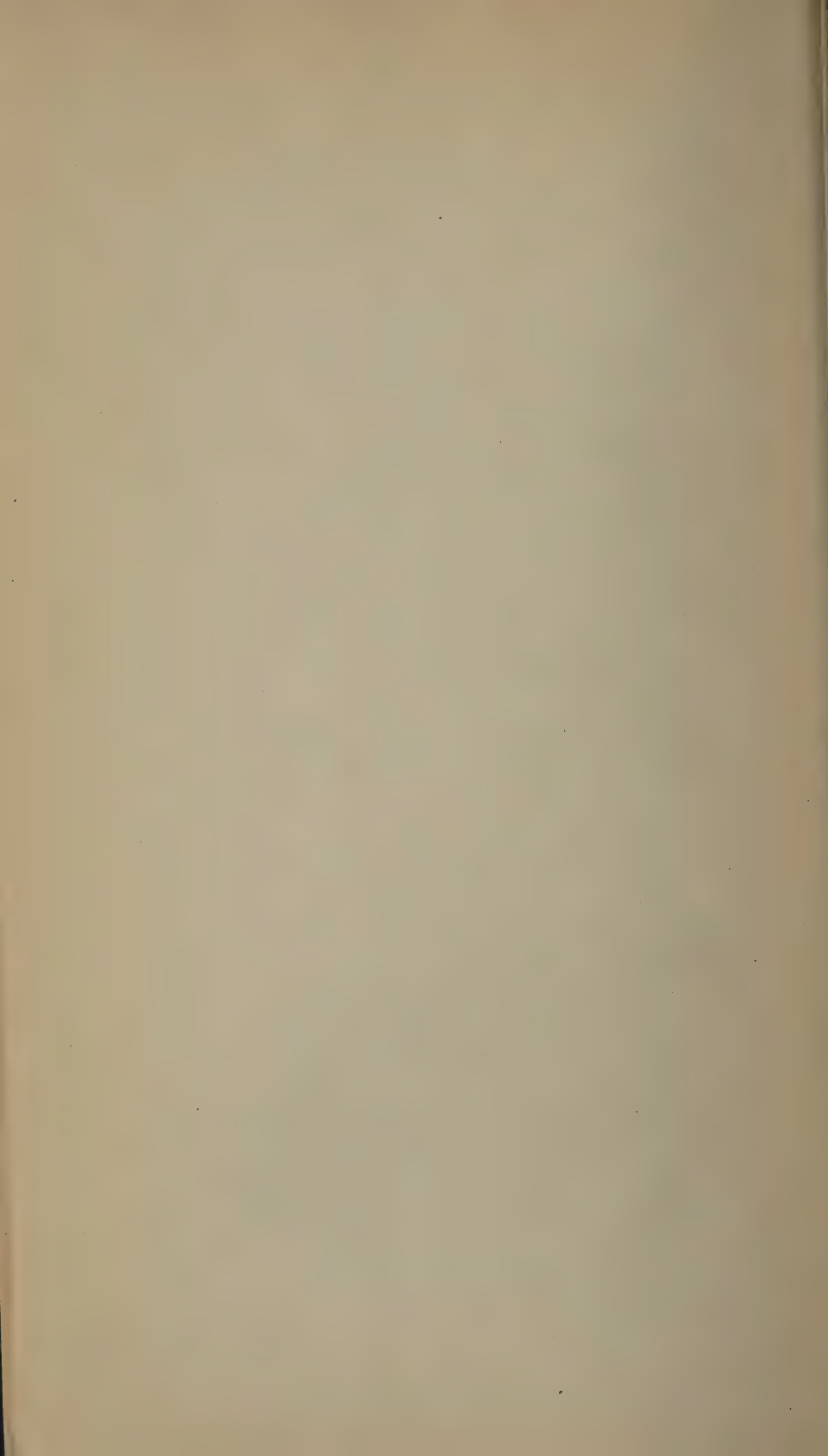
Sec. 6. *And be it further enacted*, That if in any State, or part thereof, in which the inhabitants have by the President been declared in a state of insurrection, the said insurrection shall have continued for a period of six months, then and in that case the President is authorized, if in his opinion it is necessary to the successful suppression of said insurrection, by proclamation to fix and appoint a day when all persons holden to service or labor in any such State, or part thereof as he shall declare, whose service or labor is by the law or custom of said State due to person or persons who after the day so fixed by said proclamation shall levy war or participate in insurrection against the United States, or give aid to the same, shall be free and discharged from all such claim to labor or service; and thereupon said person shall be forever free and discharged from said labor and service, any law or custom of said State to the contrary notwithstanding.

Sec. 7. *And be it further enacted*, That whenever any person claiming to be entitled to the service of any other person as a slave, under the law of any State, shall seek to enforce such claim, he shall, in the first instance, and as preliminary to the trial of such claim, show satisfactorily that he and the person to whom said service was by said law due during the period of insurrection or rebellion, was loyal to the United States.





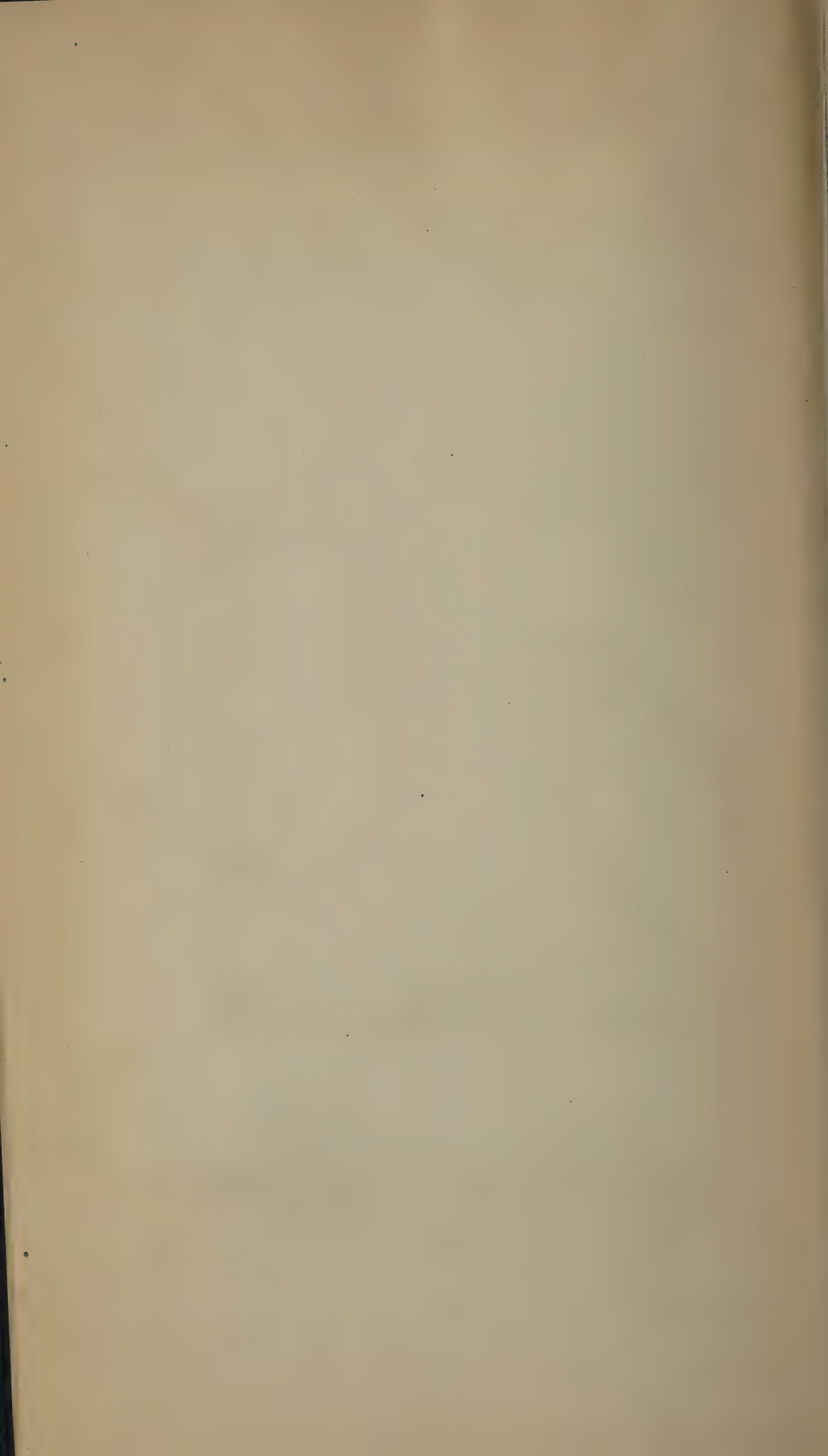
















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